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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ABDUL AYAT MOHAMMED BEY,)
also known as Ronald B. Britt-Bey,)

Petitioner,)

vs.)

RONALD GILBERT,)
COMMISSIONER AND ACTING)
JUDGE, et al.,)
Defendants..)

Case No. CV 08-5698-PA (OP)

ORDER DISMISSING
COMPLAINT WITH
LEAVE TO AMEND

I.

PROCEEDINGS

On October 1, 2008, Abdul Ayat Mohammed Bey, also known as Ronald B. Britt-Bey (“Plaintiff”), filed a pro se Civil Rights Complaint pursuant to 42 U.S.C. § 1983, after being granted leave to proceed in forma pauperis.

II.

STANDARD OF REVIEW

A. PLRA Screening.

In accordance with the mandate of the Prison Litigation Reform Act of 1995 (“PLRA”), the Court has screened the Complaint prior to ordering service for the purpose of determining whether the action is frivolous or malicious; fails to state a

1 claim on which relief may be granted; or seeks monetary relief against a defendant
2 who is immune from such relief. See 28 U.S.C. §§ 1915(e)(2), 1915A; 42 U.S.C. §
3 1997e(c)(1). The Court’s screening of the pleading under the foregoing statutes is
4 governed by the following standards. A complaint may be dismissed as a matter of
5 law for failure to state a claim for two reasons: (1) lack of a cognizable legal theory;
6 or (2) insufficient facts under a cognizable legal theory. Balistreri v. Pacifica Police
7 Department, 901 F.2d 696, 699 (9th Cir. 1990). Since Plaintiff is appearing pro se,
8 the Court must construe the allegations of the pleading liberally and must afford
9 Plaintiff the benefit of any doubt. Karim-Panahi v. Los Angeles Police Department,
10 839 F.2d 621, 623 (9th Cir. 1988). Moreover, in determining whether a complaint
11 states a claim on which relief may be granted, allegations of material fact are taken as
12 true and construed in the light most favorable to a plaintiff. Love v. United States,
13 915 F.2d 1242, 1245 (9th Cir. 1989).

14 With respect to Plaintiff’s pleading burden, the Supreme Court recently held
15 that while a complaint does not need detailed factual allegations, “a plaintiff’s
16 obligation to provide the ‘grounds’ of his ‘entitlement to relief’ requires more than
17 labels and conclusions, and a formulaic recitation of the elements of a cause of action
18 will not do . . . Factual allegations must be enough to raise a right to relief above the
19 speculative level . . . on the assumption that all the allegations in the complaint are
20 true (even if doubtful in fact) . . .” Bell Atlantic Corp. v. Twombly, — U.S. —, 127
21 S. Ct. 1955, 1964-65, 167 L. Ed. 2d 929 (2007) (citations and footnote omitted),
22 abrogating Conley v. Gibson, 355 U.S. 41, 45-46, 78 S. Ct. 99, 2 L. Ed. 2d 80 (1957)
23 (dismissal under Rule 12(b)(6) is appropriate “only if it is clear that no relief could be
24 granted under any set of facts that could be proved consistent with the allegations.”)
25 The Bell Atlantic Court further explained in a footnote:

26 While, for most types of cases, the Federal Rules eliminated the
27 cumbersome requirement that a claimant “set out in detail the facts upon
28 which he bases his claim,” Rule 8(a)(2) still requires a “showing,” rather

than a blanket assertion, of entitlement to relief. Without some factual allegation in the complaint, it is hard to see how a claimant could satisfy the requirement of providing not only “fair notice” of the nature of the claim, but also “grounds” on which the claim rests.

Id. at 1965 n.3 (citations omitted).

B. Leave to Amend.

If the Court finds that a complaint should be dismissed for failure to state a claim, the Court has discretion to dismiss with or without leave to amend. Lopez v. Smith, 203 F.3d 1122, 1126-30 (9th Cir. 2000) (en banc). Leave to amend should be granted if it appears possible that the defects in the complaint could be corrected, especially if a plaintiff is pro se. Id. at 1130-31; see also Cato v. United States, 70 F.3d 1103, 1106 (9th Cir. 1995) (“A pro se litigant must be given leave to amend his or her complaint, and some notice of its deficiencies, unless it is absolutely clear that the deficiencies of the complaint could not be cured by amendment.”) (citing Noll v. Carlson, 809 F.2d 1446, 1448 (9th Cir. 1987)). However, if, after careful consideration, it is clear that a complaint cannot be cured by amendment, the Court may dismiss without leave to amend. Cato, 70 F.3d at 1005-06.

III.

SUMMARY OF PLAINTIFF’S ALLEGATIONS

Plaintiff has filed a Civil Rights Complaint against Defendants San Bernardino County Superior Court Commissioner Ronald Gilbert, the San Bernardino County Superior Court, Manager of Certified Self Storage Kimie Lee Kasner, and several unnamed police officers. (Compl. at 1.) From what the Court can gather from the Complaint, Plaintiff was a defendant in a state criminal case involving the theft of personal items from a storage facility. Defendant Gilbert was the presiding commissioner in the case. (Id. at 1-5.) Plaintiff alleges violations of the Fourth, Fifth, and Sixth Amendments. (Id. at 2.) Plaintiff seeks monetary damages as well as injunctive relief. (Id. at 14-15.) Plaintiff sues all Defendants in their individual and

1 official capacities. (Id. at 1.)

2 IV.

3 DISCUSSION

4 **A. The Complaint Is Subject to Dismissal Based on Judicial Immunity.**

5 Absolute immunity forecloses claims based on a judge's actions conducted
6 while in his judicial capacity. Mireles v. Waco, 502 U.S. 9, 11, 112 S.Ct. 286, 112 S.
7 Ct. 286, 116 L. Ed. 2d 9 (1991) ("judicial immunity is an immunity from suit, not just
8 from ultimate assessment of damages.") From what the Court can gather from the
9 Complaint, Plaintiff was a defendant in a state criminal case involving the theft of
10 personal items from a storage facility. Defendant Gilbert was the presiding judicial
11 officer in the case. (Compl. at 7-9.) Since the allegations are based on the actions that
12 took place while Commissioner Gilbert was acting in his judicial capacity, the claim
13 is subject to dismissal regardless of the remedy sought.

14 **B. The Complaint Fails to State a Claim for Relief Against Defendant Kasner.**

15 In order to state a claim for relief in a § 1983 action, a plaintiff must plead that
16 (1) the defendants acted under color of state law; and (2) deprived plaintiff of rights
17 secured by the Constitution or federal statutes. Gibson v. United States, 781 F.2d
18 1334, 1338 (9th Cir. 1986); see also West v. Atkins, 487 U.S. 42, 48, 108 S. Ct. 2250,
19 101 L. Ed. 2d 40 (1988); Sanchez v. City of Santa Ana, 936 F.2d 1027, 1038 (9th Cir.
20 1991). Section 1983 does not provide a cause of action for violations of state law.
21 See Ove v. Gwinn, 264 F.3d 817, 824 (9th Cir. 2001); Sweaney v. Ada County, 119
22 F.3d 1385, 1391 (9th Cir. 1997); Lovell v. Poway Unified Sch. Dist., 90 F.3d 367, 370
23 (9th Cir. 1996). However, where a violation of state law is also a violation of a
24 constitutional right, § 1983 does provide a cause of action. See Lovell, 90 F.3d at
25 370.

26 A defendant has acted under color of state law where he or she has "exercised
27 power 'possessed by virtue of state law and made possible only because the
28 wrongdoer is clothed with the authority of state law.'" West, 487 U.S. at 49; see also

1 Johnson v. Knowles, 113 F.3d 1114, 1117 (9th Cir. 1997); Vang v. Xiong, 944 F.2d
 2 476, 479 (9th Cir. 1991). The Supreme Court has articulated four distinct tests for
 3 determining when the actions of a private individual amount to state action: (1) the
 4 public function test; (2) the joint action test; (3) the state compulsion test; and (4) the
 5 governmental nexus test. Collins v. Womancare, 878 F.2d 1145, 1148-49 (9th Cir.
 6 1989); see also George v. Pacific-CSC Work Furlough, 91 F.3d 1227, 1231 (9th
 7 Cir.1996).

8 Plaintiff has named Kimie Lee Kasner, the manager of a self storage facility as
 9 a Defendant. (Compl. at 1.) However, the Complaint fails to allege any facts upon
 10 which Defendant Kasner can be deemed a state actor for purposes of a § 1983 action,
 11 Thus, the Complaint is subject to dismissal for failure to state a claim upon which
 12 relief can be granted against Defendant Kasner.

13 **C. The Complaint Is Subject to Dismissal for Failure to Comply with Rule 8**
 14 **of the Federal Rules of Civil Procedure.**

15 Rule 8 of the Federal Rules of Civil Procedure provides that: “[a] pleading
 16 which sets forth a claim for relief, whether an original claim, counterclaim, cross-
 17 claim, or third-party claim, shall contain . . . (2) a short and plain statement of the
 18 claim showing that the pleader is entitled to relief,. . .” Fed. R. Civ. P. 8(a). Rule 8
 19 further provides that: “[e]ach averment of a pleading shall be simple, concise, and
 20 direct. . .” Fed. R. Civ. P. 8(e)(1). A district court has the power to dismiss a
 21 complaint when a plaintiff fails to comply with the Federal Rules of Civil Procedure,
 22 including Rule 8(a)(2)’s “short and plain statement” requirement. See Vakalis v.
 23 Shawmut Corp., 925 F.2d 34, 36 (1st Cir. 1991); Mangan v. Weinberger, 848 F.2d
 24 909, 911 (8th Cir. 1988).

25 From what the Court can gather from the Complaint, Plaintiff was a defendant
 26 in a state criminal case involving the theft of personal items from a storage facility.
 27 Defendant Gilbert was the presiding judicial officer in the case. (Compl. at 7-9.) The
 28 rest of the Complaint is rambling in nature and extremely difficult to comprehend. As

1 a result, it is difficult to determine what specific claims are being alleged against each
2 Defendant and what specific facts support each claim. As a result, the Complaint fails
3 to comply with the requirements of Rule 8 and is subject to dismissal.

4 **V.**

5 **ORDER**

6 Based on the foregoing, the Complaint is dismissed with leave to amend. See
7 Noll v. Carlson, 809 F.2d 1446, 1448 (9th Cir. 1987) (holding that a pro se litigant
8 must be given leave to amend his complaint unless it is absolutely clear that the
9 deficiencies of the complaint cannot be cured by amendment).

10 If Plaintiff still wishes to pursue this action, he shall have thirty (30) days from
11 the date of this Order within which to file a First Amended Complaint, attempting to
12 cure the defects in the original Complaint. The First Amended Complaint shall be
13 complete in itself and must remedy the deficiencies discussed. Plaintiff may not use
14 “et al.” in the caption but must name each defendant against whom claims are stated.
15 Furthermore, Plaintiff must use the blank Central District civil rights complaint form
16 accompanying this order, must sign and date the form, must completely and accurately
17 fill out the form, and must use the space provided in the form to set forth all of the
18 claims that he wishes to assert in his First Amended Complaint. The Clerk is directed
19 to provide Plaintiff with a blank Central District civil rights complaint form. The First
20 Amended Complaint shall not refer to the original Complaint.

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28 Failure to comply with these requirements may result in the dismissal of this

1 action for failure to prosecute and/or failure to comply with a court order. Failure to
2 remedy the deficiencies discussed may also result in a recommendation that the action
3 be dismissed.

4
5 **IT IS SO ORDERED.**

6
7 DATED: October 15, 2008


HONORABLE OSWALD PARADA
United States Magistrate Judge